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Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

October Term, 1997

GUY E. HUNNEWELL, JR., PETITIONER

v.

STATE OF MAINE, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE MAINE SUPREME JUDICIAL COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Did the Maine Supreme Judicial Court, sitting as the Law Court, deprive the defendant of his right to due process under the Fourteenth Amendment to the United States Constitution by denying his appeal and affirming his conviction of operating after suspension for want of payment of the $25.00 reinstatement fee despite the State's failure to provide him with the statutorily required notice of suspension, despite the State's failure to provide any prior notice of the requirement to pay the reinstatement fee, and despite his having previously paid his fine in accordance with the clerk's letter informing him of the amount of the fine and that until the fine is paid there would be a suspension of his right to operate?

II. Did the Maine Supreme Judicial Court, sitting as the Law Court, deprive the defendant of his right to due process under the Fourteenth Amendment to the United States Constitution by denying his appeal and affirming his conviction of operating after suspension despite the State's failure to provide him with an opportunity for hearing prior to suspension of his driver's license?

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DECISIONS AND ORDERS ENTERED BELOW

The decision of the Maine Supreme Judicial Court, sitting as the Law Court, in State of Maine v. Guy E. Hunnewell, Jr. dated April 21, 1998 is an unpublished memorandum of decision, Decision 98-68.

With respect to that decision, which appears in full in the Appendix to this petition as Item 1, reference is made to Law Docket No. Som-97-480 of the Maine Supreme Judicial Court.

With respect to proceedings in the trial court, reference is made to Docket No. CR-97-151 of the Superior Court for Somerset County.

JURISDICTION

The decision of the Maine Supreme Judicial Court, sitting as the Law Court in this matter, was issued April 21, 1998. This petition for writ of certiorari was filed by first class (priority) mail within the 90 day period from the date of the decision as permitted by Rule 13 of the Supreme Court Rules. The Superme Court of the United States of America has jurisdiction with respect to this matter pursuant to the provisions of Article III, Section 2, of the Constitution of the United States as this matter is one arising under the Fourteenth Amendment to the Constitution of the United States, and pursuant to the provisions of 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This matter involves Section 1 of the Fourteenth Amendment to the Constitution of the United States which is set forth below.

FOURTEENTH AMENDMENT
to the
CONSTITUTION OF THE UNITED STATES

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Facts

In December of 1996, Mr. Hunnewell was stopped in York County and issued a summons called for his appearance in the District Court in Springvale on January 6, 1997. Mr. Hunnewell promptly reregistered his vehicle, but overlooked the January 6, 1997 court appearance. On February 10, 1997, he discovered his oversight and immediately wrote to the Clerk in Springvale asking how he should proceed to correct his oversight. He was informed by return mail that he "may plead guilty to the offense and pay $122.00, or come to court on a Monday or Wednesday at 9:00 AM and plead not guilty. Until that time there will be an outstanding warrant against you and a suspension of your right to operate." After confirming with the clerk by telephone on February 18, 1997 that payment of the $122.00 would take care of the matter, he mailed the $122.00 payment to the Clerk in Springvale who received it on February 19, 1997. The Clerk told Mr. Hunnewell nothing furthr about a suspension for failure to appear or about apyment of a reinstatement fee. On or about the day the Clerk received Mr. Hunnewell's letter of February 10, 1997, she mailed a notice of Mr. Hunnewell's suspension for failure to appear to the Secretary of State but not to Mr. Hunnewell.

On the evening of February 22, 1997, Mr. Hunnewell was stopped in Kennebec County by the State Police because on headlight and the plate light on his vehicle were not working. During the course of the stop, the Trooper was informed by radio that Mr. Hunnewell's license was under suspension.[1] When so informed by the

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1. On February 13, 1998, Mr. Hunnewell was convicted of operating after suspension and sentenced to five days' incarceration with regard to this first stop, which conviction is still on appeal.

Trooper, Mr. Hunnewell proffered an explanation and documents indicating that he had paid the fine for which the Trooper believed him suspended and that his license shouldn't be suspended. The Trooper refused to listen to Mr. Hunnewell's explanation or examine the documents, issued a summons for operating after suspension, and arranged for Mr. Hunnewell's wife and daughter to collect Mr. Hunnewell and his vehicle. Believing that the Tropper's information about his suspension to be erroneous and prompted by his need to return to his farm in Embden to prevent his piped from freezing, Mr. Hunnewell later resumed his trip to Embden only to be stopped in Somerset County by another Trooper in the early morning hurs of February 23, 1997, and was arrested for operating after suspension. Neither Trooper informed Mr. Hunnewell of the reinstatement fee and Mr. Hunnewell continued to believe it was all a big mistake. When he finally arrived home later on February 23, 1997, he found in his mail the notice of suspension from the Secretary of State and learned for the first time of the need to pay a reinstatement fee. The morning of Monday, February 24, 1997, Mr. Hunnewell found a ride to Augusta and paid the reinstatement fee.

Procedure

On April 4, 1997, the State filed in the District Court, Division of Somerset, a complaint charging Mr. Hunnewell with operating after suspension for failure to appear. Mr. Hunnewell was arraigned April 9, 1997, at which time he entered a plea of "not guilty." On April 25, 1997, Mr. Hunnewell asked for a jury trial and, on May 1, 1997, the case was transferred to the Superior Court for Somerset County.

The complaint was received by the Superior Court on May 12, 1997. On July 30, 1997, Mr. Hunnewell moved for a continuance, and the Court entered an order

continuaing the trial to "any time after" August 18, 1997. Mr. Hunnewell filed a second motion for continuance on August 11, 1997, but the second motion was denied.

The case was called for trial on August 18, 1997, and a jury was selected. After jury selection and immediately before trial began, the State moved to amend the complaint so as to eliminate Mr. Hunnewell's intended defense to the charge. The complaint was amended over Mr. Hunnewell's objection, and Mr. Hunnewell's request for additional time to prepare was denied. Trial began August 18, 1997. The jury received its instructions the following morning and, after brief deliberations, returned a verdict of "guilty." Mr. Hunnewell was sentenced to a $450.00 fine, plus a $54.00 surcharge and a $10.00 victim fee. Mr. Hunnewell promptly filed a notice of appeal, and his sentence was stayed pending appeal. The Law Court's decision denying the appeal was issued on April 21, 1998.

ARGUMENT

During the Twentieth Century, the automobile has gone from rare oddity to luxury, to convenience, to virtual necessity, throughout most parts of the United States. The place of the automobile as a necessity of life is particularly prominent, and secure, in rural states like Maine where convenient and reliable public transportation is essentially non-existent.

It is against this background that some states have found the right to use a motor vehicle on public roads "an adjunct of the constitutional right to acquire, possess and use property which cannot be taken away without due process of law." Elizondo v. State Dept. of Revenue, Motor Vehicle Div., 570 P.2d 518, 522 (Colo. 1977). In Maine, the Law Court has stated that there is no absolute right to obtain or hold a driver's license. State v. Savard, 659 A.2d 1265, 1267 (Me. 1995). Rather, the license is "a privilege to which certain rights and responsibilities attach and for valid reasons involving public safety may be granted or withheld." Ibid. It is, nevertheless, a special privilege, "which carries with it certain due process rights." Ibid. The United States Supreme Court, however, has opined in a case involving the suspension of a driver's license that

> Once licenses are issued, ... their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. This is but an application of the general proposition that relevant constitutional constraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege."

Bell v. Burson, 402 U.S. 535, 539, 29 L.Ed.2d 90, 91 S.Ct. 1586 (1971) (citations omitted).

Under Maine law, the offense of operating after suspension does not require either actual notice or a

culpable state of mind. State v. Antonsen, 525 A.2d 1048 (Me. 1987). It is, therefore, a so-called strict liability offense, the statute making it an offense certainly is penal in nature, and must be strictly construed. State v. Anonymous, 404 A.2d 6 (Conn. Sup. 1979). Maine has made operating after suspension a crime, but one cannot be convicted of operating after suspension unless the underlying suspension is legal and valid. State v. DeBery, 103 A.2d 523 (Me. 1954). Although his efforts were far short of artful, Mr. Hunnewell legitimately attempted to challenge the validity of the alleged suspension, but his efforts were consistently rebuffed by the court.

Based on the evidence and representations offered at trial, Mr. Hunnewell had discovered the oversight for which he was subject to judicial suspension and promptly took action to correct that oversight. It appears from the timing of the Springvale Court's suspension, that the suspension was triggered not by Mr. Hunnewell's failure to appear, but rather by his attempt to correct his error. If Mr. Hunnewell's efforts had been undertaken by an attorney whose letter would have constituted an appearance, the oversight would have been corrected before the suspension. Because Mr. Hunnewell was acting pro se, his letter of February 10, 1997 was not deemed an appearance. The clerk then notified the Secretary of State of the suspension but, despite the express requirements of 29-A M.R.S.A. §2608, failed to send the required notice to Mr. Hunnewell. Instead, the clerk wrote back to Mr. Hunnewell informing him that he "may plead guilty to the offense and pay $122.00, or come to court on a Monday or Wednesday at 9:00AM and plead not guilty. Until that time there will be an outstanding warrant against you and a suspension of your right to operate." Addendum at A-3 (emphasis added). The clerk's response was confirmed by Mr. Hunnewell by telephone, and Mr. Hunnewell then paid the sum of $122.00, which sum was received by the clerk on February 19, 1997. The clerk said nothing further to Mr. Hunnewell about the suspension, much less the need to pay a reinstatement fee. By the time the Secretary of State prepared its notice of suspension, the fine had been paid and the

grounds for the suspension had been eliminated.

At no time prior to his arrival at home on February 23, 1997, even after he had been stopped the second time and arrested for operating after suspension, did anyone, including the various Troopers with whom he spoke, inform Mr. Hunnewell of the requirement that he pay a reinstatement fee. Mr. Hunnewell believed and reasonably relied upon the information given him by the clerk at the District Court in Springvale. See: Frenner v. Dependable Trucking Co., Inc., 716 F.2d 598, 602 (9th Cir. 1983). It wasn't until he finally saw the Secretary of State's written notice informing him both of the suspension and the reinstatement fee that Mr. Hunnewell was dissuaded from his reasonable, good faith belief that he was not suspended.

If the State is to rely upon the clerk letter of February 13, 1997 with respect to notice, then fundamental fairness and the related Fourteenth Amendment requirements of due process obligate the clerk to provide a complete notification including all the elements required by 29-A M.R.S.A. §2482 or, at least, §2608. Because they are immediate rather after the ten day period otherwise available to request a hearing, such complete notice is particularly necessary and appropriate in cases of suspensions for failure to appear or to pay a fine.

The absence in such cases of the ten day period in which to request a hearing also denies the person so suspended any measure of the due process required by the Fourteenth Amendment.

> The test for determining whether state action violates the Due Process Clause, formally set out in Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976), requires a court to consider: (1) the private interest that will be affected by the government's action; (2) the risk of an erroneous deprivation of such interest through the existing procedure and the probable utility of additional or substitute procedural safeguards; and (3) the government's interest in adhering to the existing procedure, including fiscal

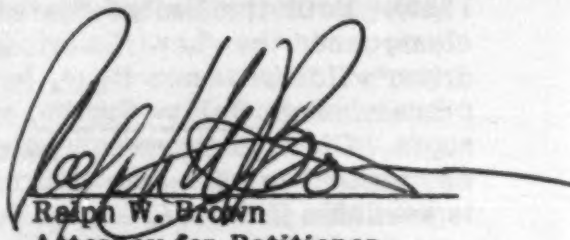
and administrative burdens that additional procedures might entail.

Roberts v. State of Maine, 48 F.3d 1287, 1292 (1st Cir. 1995). Both the United States Supreme Court has made clear, and the Law Court has acknowledged, that a driver's license, once issue, is entitled to procedural due process. See: Bell v. Burton, supra.; and State v. Savard, supra. Given the present case, the risk of an erroreous deprivation is real and, inasmuch as the ten day period is available in case of suspensions for far more significant reasons, including operating under the influence of alcohol or drugs, the State can hardly argue any compelling public safety interest in denying a hearing in cases such as this. Additional or alternative procedural safeguard would impose no significant burden upon the State, as both the clerk and the Secretary of State already are required to provide written notice of the suspension, and the ten day rule is already in place for suspensions on other far more serious grounds.

The totality of the circumstances in this case, including the incomplete and/or erroneous information provided Mr. Hunnewell by the clerk of the District Court in Springvale, the defective notice provided Mr. Hunnewell by the various law enforcement officers involved, the absence of any opportunity for a hearing prior to his suspension, the trial court's refusal to permit Mr. Hunnewell to challenge the validity of the suspension, and the magnitude of the penalty for his innocent and technical violation, were offensive to the "universal sense of fair play" and combined to deny Mr. Hunnewell the fundamental fairness envisioned and required by the Fourteenth Amendment. See: Roberts v. State of Maine, 48 F.3d at 1290-95 (1st Cir. 1995).

For all the foregoing reasons, the petitioner respectfully prays that the Court issue a writ of certiorari to review the decision of the Maine Supreme Judicial Court.

Dated: July 20, 1998.



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MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 98-68
Law Docket No. Som-97-480

STATE OF MAINE
v.
GUY E. HUNNEWELL, JR.

Submitted on Briefs April 16, 1998
Decided April 21, 1998

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, LIPEZ, and SAUFLEY, JJ.

MEMORANDUM OF DECISION

Guy E. Hunnewell, Jr. appeals from the judgment of the Superior Court (Somerset County, Alexander, J.) following a jury verdict convicting him of operating after suspension in violation of 29-A M.R.S.A. §2412-A(1) (1996). Contrary to Hunnewell's arguments, the court committed no error in granting the State's motion to amend. See M.R. Crim. P. 3(d), or in denying his third motion to continue, see State v. Deschaine, 572 A.2d 130, 132-33 (Me. 1990). Nor were the circumstances surrounding Hunnewell's conviction so fundamentally unfair as to deprive him of his right to due process. See

Moran v. Burbine, 475 U.S. 412, 432-34 (1986).

The entry is:

Judgment affirmed.